

United States
Circuit Court of Appeals

For the Ninth Circuit.

H. VAN LUVEN, as Trustee in Bankruptcy of the
Estate of W. L. HOLMAN COMPANY, a
Corporation,

Appellant,

vs.

C. F. BULOTTI and H. R. NOACK,

Appellees.

In the Matter of W. L. HOLMAN COMPANY, a
Corporation, Bankrupt.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
First Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 7936—IN BANKRUPTCY.

EXHIBIT "A."

In the Matter of W. L. HOLMAN COMPANY, a
Corporation,

Bankrupt.

**Praecipe for Transcript of Record for Use on
Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare a transcript of the record in the above-entitled matter to be used by the undersigned trustee on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, under Section 24a of the Bankruptcy Act, from that certain order of the above-entitled court made and entered herein on the 28th day of April, 1914, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, denying the petition in intervention of C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Company, a corporation, and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate.

Please include in the said transcript of record the following documents:

- (1) This Praecipe.
- (2) Petition for order to show cause on Pacific Coast Casualty Co.

- (3) Order to show cause on Pacific Coast Casualty Co.
- (4) Answer of Pacific Coast Casualty Co. to order to show cause.
- (5) Petition in intervention of C. F. Bulotti and H. R. Noack. [1*]
- (6) Statement of evidence as per statement lodged herewith or as finally settled by the District Judge.
- (7) Order of referee denying petition in intervention.
- (8) Petition of C. F. Bulotti and H. R. Noack to review referee's order.
- (9) Certificate of referee on review.
- (10) Supplemental certificate of referee on review.
- (11) Opinion and order of District Judge reversing order of referee.
- (12) Petition for and allowance of appeal.
- (13) Assignment of errors on appeal.
- (14) Citation on Appeal.

Dated, June 19th, 1914.

HENRY G. W. DINKELSPIEL,
J. M. THOMAS,
REUBEN G. HUNT,

Attorneys for H. Van Luven, Trustee of the Estate
of the Above-named Bankrupt.

Receipt of a copy of the foregoing praecipe is
hereby admitted this 19th day of June, 1914.

MANSFIELD & NEWMARK,
Attorneys for the said C. F. Bulotti and H. R.
Noack.

*Page-number appearing at foot of page of original certified Record.

[Endorsed]: Filed Jun. 19, 1914, at 2 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2]

(Title of Court and Cause.)

Stipulation for Diminution of Record.

It is hereby stipulated and agreed by and between C. F. Bulotti and H. R. Noack, and H. Van Luven, as trustee of the estate of the above-named bankrupt, that in making up the record on appeal by the said trustee in bankruptcy from the order of the above-entitled court made herein on the 28th day of April, 1914, reversing the order of A. B. Kreft, Esqr., a referee in bankruptcy of the said court, denying the petition in intervention of the said C. F. Bulotti and H. R. Noack, that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Co. and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate, the clerk of the above-entitled court shall, in following the Praecipe now on file herein, omit the full title of court and cause except upon the said praecipe and thereafter refer to the same simply as: "Title of Court and Cause," and omit all verifications and refer to the same simply as "Duly Verified," and where an exhibit is incorporated in and made a part of another exhibit, omit such exhibit from such other exhibit and refer to the same as follows: "(Here follows Exhibit No. —)."

Dated: July 14th, 1914.

MANSFIELD & NEWMARK,
Attorneys for C. F. Bulotti and H. R. Noack.

HENRY G. W. DINKELSPIEL,

J. M. THOMAS,

REUBEN G. HUNT,

Attorneys for Trustee in Bankruptcy.

[Endorsed]: Filed Jul. 15, 1914, at 12 o'clock and
20 min. P. M. W. B. Maling, Clerk. By T. L.
Baldwin, Deputy Clerk. [3]

(Title of Court and Cause.)

Stipulation as to Record on Appeal.

The original papers having been lost or mislaid, it is hereby stipulated that attached hereto are true and correct copies of the following papers mentioned in the Praecipe now on file herein or appeal by H. Van Luven, trustee of the estate of the above-named bankrupt, to the Circuit Court of Appeals of the United States for the Ninth Circuit, from the order of the above-entitled court made and entered herein on the 28th day of April, 1914, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the said court, denying the petition in intervention of C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Company and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate:

- (1) Petition for order to show cause.
- (2) Order to show cause.

- (3) Answer of Pacific Coast Casualty Co. to order to show cause.
- (4) Petition in intervention of C. F. Bulotti and H. R. Noack.
- (5) Order of referee denying petition in intervention.
- (6) Petition for review of order of referee.

and that the copies of such papers attached hereto shall be used by the clerk of the above-entitled court in the form therein set forth in making up the record on said appeal in accordance with the said Praecipe.

HENRY G. W. DINKELSPIEL,
J. M. THOMAS,
REUBEN G. HUNT,

Attorneys for the said Trustee in Bankruptcy.

MANSFIELD & NEWMARK,
Attorneys for C. F. Bulotti and H. R. Noack. [4]

EXHIBIT "B."

(Title of Court and Cause.)

Petition for Order to Show Cause.

The petition of H. Van Luven respectfully shows:
That he is now and ever since the 24th day of April, 1913, has been the duly appointed, qualified and acting trustee of the estate of the above-named bankrupt,

That the Pacific Coast Casualty Company has in its possession or under its control the sum of \$1,179.60, which belongs to the estate of the above-named bankrupt, but the said corporation refuses to deliver the same to the trustee.

WHEREFORE, said trustee prays that an order

to show cause may be issued herein directing the said corporation to appear before the Referee at a time and place fixed in said order and then and there to show cause why said money should not be paid over to the trustee herein.

H. VAN LUVEN,
Trustee of the Estate of the Above-named Bank-
rupt.

(Duly verified.) [5]

EXHIBIT "C."

(Title of Court and Cause.)

Order to Show Cause.

Upon reading and filing the petition of the trustee herein praying for an order to show cause upon Pacific Coast Casualty Company, and good cause appearing therefor,

IT IS HEREBY ORDERED that the said Pacific Coast Casualty Company be, and it is hereby directed to appear before the undersigned referee at his office Room 213 United States Postoffice Building, Seventh and Mission Streets, San Francisco, California, on Wednesday, the 14th day of May, 1913, at 10 o'clock A. M., then and there to show cause, if any there be, why the prayer of said petitioner should not be granted; and,

IT IS HEREBY FURTHER ORDERED that a copy of the said petition be served with this order to show cause for the information of said corporation.

Done in open court this 8th day of May, 1913.

ARMAND B. KREFT,
Referee in Bankruptcy. [6]

EXHIBIT "D."

(Title of Court and Cause.)

Answer of Pacific Coast Casualty Co. to Order to Show Cause.

Comes now Pacific Coast Casualty Company, a corporation, and answers the petition heretofore filed herein and alleges that it is a corporation organized and existing under and by virtue of the laws of the State of California;

That on or about the 11th day of June, 1912, W. L. Holman Company, the bankrupt above named, entered into a contract with the City and County of San Francisco, State of California, wherein and whereby said W. L. Holman Company agreed to construct for said City and County of San Francisco forty-three (43) cars for the Municipal Railway;

That said W. L. Holman Company were required to furnish a bond running to said City and County of San Francisco conditioned that said W. L. Holman Company perform and complete the terms of said contract;

That said W. L. Holman Company requested Pacific Coast Casualty Company to furnish for it and to execute and deliver said bond to said City and County of San Francisco as a surety of the said W. L. Holman Company, and on the 11th day of June, 1912, said Pacific Coast Casualty Company did execute and deliver to the City and County of San Francisco as surety for the said W. L. Holman Company said bond;

That on the 11th day of June, 1912, in consideration of the execution of the said bond by said Pacific

Coast Casualty Company said W. L. Holman assigned to the Pacific Coast Casualty Company all moneys payable by the City and County of San Francisco under said contract with W. L. Holman Company for the construction of said cars, in trust, to be distributed among the [7] creditors furnishing labor and material used in the construction of said cars, and that it was then and there agreed that said moneys should be paid by the Pacific Coast Casualty Company to such creditors furnishing labor and material for the construction of said cars, and that the surplus, if any, remaining after the payment of all of such claims for labor and material should be paid to W. L. Holman Company;

At the time of making the said assignment W. L. Holman Company made, executed and delivered to Pacific Coast Casualty Company certain instruments in writing in the words and figures following:

(Here follows Trustee's Exhibits Nos. 2 and 3, contained in Exhibit "F.")

That said W. L. Holman Company has contracted debts for labor and material used for the construction of said cars in a sum exceeding the total amount paid and to be paid under said contract with the City and County of San Francisco and there is and will be no surplus after such claims for labor and material are paid;

That the sum of Eleven Hundred and Seventy-nine and 68/100 (\$1179.68) Dollars now in the possession of the Pacific Coast Casualty Company, and referred to in said petition filed herein, was received from the City and County of San Francisco under said assignment from W. L. Holman Company here-

inabove referred to and that said sum and all thereof is needed to pay the claims for labor and material furnished for the construction of said cars, and said sum, and all thereof, is held in trust by the Pacific Coast Casualty Company for the payment of claims for labor and material used in the construction of said cars;

WHEREFORE, said Pacific Coast Casualty Company prays that the order to show cause heretofore issued herein be discharged and that it be ordered and decreed that the trustee of the estate of the above-named bankrupt has no interest, right or [8] claim in or to said sum of Eleven Hundred and Seventy-nine and 68/100 (\$1,179.68) Dollars.

FRANK P. DEERING,

Attorney for Pacific Coast Casualty Company.
(Duly verified.) [9]

EXHIBIT "E."

(Title of Court and Cause.)

Petition in Intervention of C. F. Bulotti and H. R. Noack.

Come C. F. Bulotti and H. R. Noack, and by leave of Court first had and obtained, specially appear on behalf of and as trustees and representatives of certain persons, firms and corporations hereinafter mentioned, and intervening in the matter of the petition of H. Van Luven, trustee of the estate of the above-named bankrupts, for an order directing the Pacific Coast Casualty Company to pay over to said trustee the sum of \$1179.68, and hereby consenting to the jurisdiction of this court to try, hear and de-

termine the title to and the right to the possession of said sum of \$1179.68, but expressly reserving the right to object to the jurisdiction of this Court to try, hear or determine any controversies or matters relating, referring to or growing out of any other funds or moneys due or to become due from the City and County of San Francisco under a certain contract with the above-named bankrupts, hereinafter referred to, and expressly reserving all objections to the jurisdiction of this Court to try, hear or determine any other controversies or matters, whatsoever, relating to said intervenors, or to said persons, firms and corporations so represented by said intervenors, respectfully represent:

That on or about the 11th day of June, 1912, W. L. Holman Company, the bankrupt above named, entered into a contract with the City and County of San Francisco, State of California, wherein and whereby said W. L. Holman Company agreed to construct for said City and County of San Francisco forty-three (43) cars for the Municipal Railway;

That said W. L. Holman Company were required to furnish a [10] bond running to said City and County of San Francisco conditioned that said W. L. Holman Company perform and complete the terms of said contract;

That said W. L. Holman Company requested Pacific Coast Casualty Company, a corporation, to furnish for it and to execute and deliver said bond to said City and County of San Francisco as a surety of the said W. L. Holman Company, and on the 11th day of June, 1912, said Pacific Coast Casualty Company did execute and deliver to the City and County

of San Francisco as surety for the said W. L. Holman Company said bond;

That on the 11th day of June, 1912, all moneys payable by the City and County of San Francisco under said contract were assigned, transferred and set over by said W. L. Holman Company to said Pacific Coast Casualty Company for the use and benefit of the persons, firms and corporations furnishing labor and material used in the construction of said cars, and it was then agreed that said moneys should be paid by the Pacific Coast Casualty Company to such persons, firms and corporations furnishing labor and material for the construction of said cars, and that the surplus, if any, remaining after the payment and satisfaction of all of such claims for labor and material should be paid to W. L. Holman Company;

That at the time of making the said assignment W. L. Holman Company, made, executed and delivered to Pacific Coast Casualty Company certain instruments in writing in the words and figures following:

(Here follows Trustee's Exhibits Nos. 2 and 3 contained in Exhibit "F.")

That as your intervenors are advised and believe, and therefore allege, some time in the month of December, 1912, the said W. L. Holman Company sublet to the Union Iron Works of San Francisco the construction of 23 of said cars and the said W. L. Holman constructed, and thereafter delivered [11] to the City and County of San Francisco 20 of said cars;

That at various dates subsequent to June 11th, 1912, the following persons, firms and corporations

furnished labor and sold and delivered to said W. L. Holman Company materials, which labor and materials were intended to be used and were actually used in the construction of and form a permanent part of said 20 cars so constructed and delivered by said W. L. Holman Company in the amounts and for the sums as hereinafter set opposite the respective names of said persons, firms and corporations, to wit:

Names.	Amounts.
Australian Hardware Co.....	\$ 140.58
Adams & Westlake Co.....	501.82
Berger & Carter Co.....	79.46
Bass-Hueter Paint Co.....	193.62
Brill Co., J. G.....	15,875.84
Boyd & Moore.....	448.64
Boesch Lamp Co.....	8.25
Cook Belting, H. N.....	13.65
Curtain Supply Co.....	1,318.40
Columbia Steel Company.....	1,861.56
Cottier Ventilating System.....	495.80
California Air Purifying Co.....	343.91
David Foundry Co.....	453.78
Degen Belting Co., L. P.....	5.00
Eccles & Smith Co.....	1,122.74
Edminster, O. M.....	110.80
Evans & Co., C. H.....	428.20
Eclipse Ry. Supply Co., The.....	1,000.00
Enterprise Foundry Co.....	353.35
Fuller Co., W. P.....	1,093.86
Foucar, Ray & Simon.....	.58
Greenberg's Sons, M.....	1,799.59
James Graham Manufacturing Co.....	9.91

Names.	Amounts.
General Ry. & Supply Co.....	689.44
Hale & Kilburn Co.....	5,212.00
Hibernia Sheet Metal Works.....	110.50
Judson Mfg. Co.....	3,318.09
Johnson Fare Box Co.....	1,746.17
Kitchen & Son.....	20.62
Mortenson Construction Co.....	178.15
Mark-Lally Co.....	327.50
Marwedel, C. W.....	42.84
McNutt Kahn Co.....	8.50
Montague & Co., W. W.....	614.37
Meyercord Co.	278.25
Mallott & Petersen.....	155.00
McNab & Smith	42.85
Meese & Gottfried Co.....	.26
Payne's Bolt Works.....	243.43
Pacific Hardware & Steel Co.....	1,698.40
Pierson, Roeding & Co.....	194.00
Pope & Talbot.....	1,014.00
[12]	
Pantasote Co.	675.89
Plant Rubber Co.....	51.69
Pacific Tool & Supply Co.....	4.24
Ruegg, Anton	4.50
Railway Improvement Co.....	120.00
Symon Brothers	425.64
Standard Oil Co.....	114.99
S. F. Pioneer Varnish Co.....	144.25
Steiger & Kerr Co.....	134.80
Selby Smelting & Lead Co.....	10.56
S. F. Brazing & Welding Co.....	8.00

Names.	Amounts.
Taylor & Spottswood Co.....	858.33
Van Arsdale-Harris Lumber Co.....	706.80
White Bros.	5,185.74
Westinghouse Mfg. Co.....	63,858.72
Wilbert, F. V.....	28.00
Western Brass Company.....	390.20
Weeks-Howe-Emerson Co.	4.04
Western Union Telegraph Co.....	.61
West Coast Wire & Iron Works.....	107.20
Pacific Gas & Electric Co.....	111.00
Merchants' National Bank.....	10,000.00
Rios, A.	500.00
The A. T. & S. F. Ry. Co.....	16.90
Pacific Telephone & Telegraph Co.....	14.66

That under and in pursuance of said agreement hereinabove set forth the said Pacific Coast Casualty Company collected from said City and County of San Francisco the first payment due from the City and County of San Francisco under said contract, and of which sum so paid to said Pacific Coast Casualty Company the said sum of \$1,179.68 is a part and portion;

That prior to the 7th day of January, 1913, your intervenors and A. F. Irwin were appointed a committee to represent and act for said persons, firms and corporations so furnishing labor and material in the construction of said 20 cars;

That on the 7th day of January, 1913, the said Pacific Coast Casualty Company and the said creditors' committee entered into a certain agreement in the words and figures following, to wit:

(Here follows Trustee's Exhibit No. 5, contained in Exhibit "F.")

That said creditors' committee demanded of said Pacific Coast Casualty Company the said sum of \$1,179.68;

That thereafter, acting under and in pursuance of the [13] agreements hereinabove set forth, the said creditors' committee received the second and third payments due from the City and County of San Francisco under said contract aggregating the sum of \$69,300.00, and in pursuance of said agreements distributed pro rata among said persons, firms and corporations a sum equal to forty-six (46) per cent of their respective claims and demands as hereinabove set forth, and there is now due and unpaid to said persons, firms and corporations upon their said claims and demands a sum equal to fifty-four (54) per cent of the amount of their respective claims for said labor and materials so furnished;

That the total amount of money paid and to be paid under said contract with the City and County of San Francisco for the construction of said 20 cars is less than the total amount of said claims for said labor and materials so furnished in the construction thereof and there will be no surplus out of said funds accruing or to accrue from said City and County of San Francisco for the construction of said 20 cars after said claims for labor and material have been paid, and there will be no balance remaining out of the moneys arising under said contract to be paid to said W. L. Holman Company after the satisfaction of said claims;

That after the 7th day of January, 1913, said A. M. Irwin resigned as a member of said creditors' committee;

WHEREFORE, your intervenors pray that said sum of \$1,179.68 be delivered over unto them as the representatives and agents of said creditors so furnishing material and labor in and about the construction of said 20 cars.

Dated June 7th, 1913.

C. F. BULOTTI,
H. R. NOACK,
Intervenors.

(Duly verified.) [14]

EXHIBIT "G."

(Title of Court and Cause.)

Order Denying Petition in Intervention.

H. Van Luven, the duly appointed, qualified and acting trustee of the estate of the above-named bankrupt, having filed herein on the 8th day of May, 1913, his duly verified petition praying that the undersigned referee issue an order directing the Pacific Coast Casualty Company, a corporation, to appear before the said referee and show cause, if any there be, why it should not pay over to the said trustee, the sum of \$1,179.68 moneys alleged by the said trustee to belong to the estate of the bankrupt but in the possession or under the control of the said company, and said order having been duly issued,

And the said corporation having, on the 22d day of May, 1913, filed herein its return to the said order to show cause wherein it alleges that the said sum

of \$1,179.68 is a balance of a fund remaining in the hands of the said corporation by reason of an assignment by the bankrupt to the said corporation made on the 11th day of June, 1912, and which said fund the said surety company holds in trust for the payment of all claims for labor and material furnished to the said bankrupt and used in the construction by the said bankrupt of a certain twenty (20) street-cars for the City and County of San Francisco, a municipal corporation, under a contract between the bankrupt and the said municipal corporation for the faithful performance of which said contract the said Pacific Coast Casualty Company as surety executed and delivered to the said municipal corporation a bond in the sum of \$50,000.

And C. F. Bulotti and H. R. Noack having by leave of Court first obtained intervened in the said matter by their petition [15] in intervention filed herein on the 9th day of June, 1913, in which said petition in intervention the said Bulotti and Noack alleged that they, together with one A. M. Irwin, were, on the 7th day of January, 1913, by the creditors who furnished the said labor and materials used in the construction of the said street-cars, appointed a committee to represent and act for the said creditors; and further alleging that on the 11th day of June, 1912, all moneys to be paid by the said municipal corporation under the said contract were assigned by the bankrupt to the Pacific Coast Casualty Company, a corporation, for the use and benefit of the persons, firms and corporations furnishing labor and material used in the construction of the said street-cars and

that it was agreed that said moneys should be held in trust by the said Pacific Coast Casualty Company, a corporation, and paid by it to such persons, firms and corporations, and praying that the said sum of \$1,179.68 be *directed paid* over to them as the representatives of the said creditors so furnishing such material and labor.

And the Pacific Coast Casualty Company, a corporation, having submitted to the jurisdiction of the referee for the determination of the controversy herein involved, and the said Bulotti and Noack, in the intervening petition, having consented "to the jurisdiction of this court to try, hear and determine the title to and the right to the possession of the said sum of \$1,179.68," and the said matter having been duly heard and submitted and the undersigned referee having fully considered the evidence and being fully advised in the law and the premises, hereby finds as follows:

1. That the creditors represented by the said intervenors have no right, title or interest in or to the said sum of \$1,179.68, superior to the right, title or interest therein of any other creditor or creditors of the bankrupt of the class of general unsecured creditors, and no right, title or interest [16] therein superior to the right, title and interest therein of the trustee in bankruptcy.

2. That no assignment or trust for the benefit of creditors represented by the said intervenors was created by the alleged assignment of June 11th, 1912, to the said Pacific Coast Casualty Company, a corporation, or at all.

3. That the liability of the Pacific Coast Casualty Company as surety on the said bond, has not been terminated and for that reason no order should be made at this time as to the Pacific Coast Casualty Company, a corporation. But, altho no order is to be made as to the rights of the said Pacific Coast Casualty Company, a corporation, in the said money at this time, the attorneys for the said intervening creditors, having requested that an order be made at this time as to the rights of such creditors in the said money,—

IT IS HEREBY ORDERED that the petition of the said intervening creditors so represented by C. F. Bulotti and H. R. Noack be and the same is hereby denied; and

IT IS HEREBY FURTHER ORDERED that the matter of the rights of the said Pacific Casualty Company, a corporation, in and to the said fund is hereby continued until Tuesday, the 9th day of December, 1913.

Done in open court, this 25th day of November, 1913.

A. B. KREFT,
Referee in Bankruptcy. [17]

EXHIBIT "H."

(Title of Court and Cause.)

Petition to Review Referee's Order.

To the Honorable the District Court of the United States for the Northern District of California, First Division:

The petition of C. F. Bulotti and H. R. Noack re-

spectfully represents:

That H. Van Luven, trustee of the estate of the above-named bankrupt on the 8th day of May, 1913, filed with the Referee herein a petition for an order to show cause in the words and figures following, to wit:

(Here follows Exhibit "B.")

On said 8th day of May, 1913, an order to show cause was made in the words and figures following:

(Here follows Exhibit "C.")

Thereafter, and within the time allowed by the Court the Pacific Coast Casualty Company filed its answer to said petition and order to show cause in the words and figures following, to wit:

(Here follows Exhibit "D.")

On the 22d day of May, 1913, said Referee made an order permitting C. F. Bulotti and H. R. Noack, and all creditors of said W. L. Holman Company to intervene in the matter of said petition of the trustee and said order to show cause thereon, and thereafter, on the 9th day of June, 1913, C. F. Bulotti and H. R. Noack, as trustees and representatives of certain persons, firms and corporations filed their intervention in said matter, which is in the words and figures following:

(Here follows Exhibit "E.") [18]

Thereafter, on the 13th day of June, 1913, a hearing was had on said petition and petition in intervention and it was then admitted by counsel for the trustee that all of the allegations of said petition in intervention were true excepting that the trustee did not admit that the instruments of June 11th,

1912, as set out in said petition in intervention, constituted an assignment. It was further stipulated at said hearing that all of the testimony taken in the general examination of the bankrupt was to be considered as having been taken upon this proceeding of the said petition in intervention and said matter was argued and submitted;

Thereafter, on the 25th day of November, 1913, the referee herein made an order denying the prayer of said petition in intervention, which order is in the words and figures following:

(Here follows Exhibit "G.")

That your petitioners complain of said order and believe said order is erroneous in the following particulars:

1. That the evidence in this proceeding does not warrant the finding of the referee that the creditors represented by the said intervenors have no right, title or interest in or to the said sum superior to the right, title or interest therein of the general unsecured creditors, and no right, title or interest therein superior to the right, title or interest therein of the trustee in bankruptcy;

2. That the evidence in this proceeding does not warrant the finding of the referee that no assignment or trust for the benefit of the creditors represented by the said intervenors was created;

3. That, on the contrary, the evidence in this proceeding fully shows that your petitioners as representatives and agents of the several persons, firms and corporations in said [19] petition in intervention enumerated are entitled to the fund here in

question, and that their right, title and interest therein is superior to that of the general unsecured creditors and is superior to the right, title and interest of the trustee in bankruptcy, and that said fund was assigned in trust for the benefit of said persons, firms and corporation, and that the said order of the referee made on the 25th day of November, 1913, is erroneous for these reasons;

WHEREFORE your petitioners pray that said order of the referee made on the 25th day of November, 1913, be reviewed by this Honorable Court, and that said order in so far as it denies the petition of said intervening creditors as represented by your petitioners herein be reversed, and set aside, and that this Court make its order granting the prayer of said petition in intervention, and for such other and further relief as to this Court may seem meet and proper in the premises.

Dated December 10th, 1913.

MANSFIELD & NEWMARK,

Attorneys for Petitioners.

(Duly verified.)

[Endorsed]: Filed Jul. 30, 1914, at 3 o'clock and 30 min. P. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [20]

EXHIBIT "F."

(Title of Court and Cause.)

Approved Statement of Evidence Upon Appeal.

(C. F. Bulotti and H. R. Noack.)

BE IT REMEMBERED, that on the 13th day of

June, 1913, the petition in intervention of C. F. Bulotti and H. R. Noack praying that there be awarded to them the sum of \$1,179.68 claimed by the trustee in bankruptcy to be a part of the estate of the bankrupt, and admitted by the answer of the Pacific Coast Casualty Co., a corporation, to be in its possession; came on regularly for hearing before Hon. Armand B. Kreft, referee in bankruptcy, the said C. F. Bulotti and H. R. Noack being represented by Mansfield & Newmark, their attorneys, and the trustee in bankruptcy being represented by Henry G. W. Dinkelspiel, J. M. Thomas and Reuben G. Hunt, his attorneys, whereupon the following proceedings were had:

It was stipulated that all of the allegations of the said petition in intervention, except those allegations contained in the fifth paragraph therein, commencing with the words "that on the 11th day of June, 1912, all money payable" and ending with the words "should be paid to W. L. Holman Company," in so far as they attempt to plead the legal effect of Trustee's Exhibits Nos. 2 and 3, should be admitted to be true, and that the evidence offered and received on the general [21] examination of the bankrupt in so far as it was material and competent to the issues raised by the petition in intervention should be considered as having been taken upon this proceeding.

A statement of such evidence is as follows, to wit:

Testimony of Marshall A. Frank, Called for Trustee.

Direct Examination.

During the year 1912 I was Vice-President of the Pacific Coast Casualty Company. We wrote a bond

(Testimony of Marshall A. Frank.)

for the Holman Company in June, 1912. In June, 1912, the Holman Company secured a contract from the City and County of San Francisco for the construction of forty-three cars for its municipal railway. There were two or three meetings and a general conversation in reference to their bidding and the work that they were about to do. The question was whether we would write the bond or not. After a number of meetings we finally concluded to write the bond under certain conditions. After the bond was written, it was furnished to the City and County of San Francisco. The bond is known as Trustee's Exhibit No. 1. No bond was ever written by the Pacific Coast Casualty Company to protect labor and material on the contract that the Holman Company had with the City. We entered into with the Holman Company the agreements known as Trustee's Exhibits Nos. 2 and 3. The Holman Company did not execute and deliver to us any indemnity contract. The bond and the Trustee's Exhibits Nos. 2 and 3 comprised all the agreements or writings between the Casualty Company and the Holman Company at the time the bond was executed. Trustee's Exhibit No. 3 was filed with the Auditor of the City and County of San Francisco. There were subsequent agreements on January 7, 1913, and February 4, 1913, which are [22] here known as Trustee's Exhibit No. 4. The writing dated February 4, 1913, and addressed to the Auditor and Treasurer of the City and County of San Francisco, was the only writing of which I have knowledge which passed between the Casualty Com-

(Testimony of Marshall A. Frank.)

pany and the bankrupt after the bond was issued. After June, 1912, there were a good many meetings and conversations between the creditors of the Holman Company and myself. The first meeting was about the time the bond was written. Some of the men who were afterwards creditors came to me to find out whether they could receive the payments that would be made under this contract to the Holman Company, whether the Casualty Company was going to receive them from the City and to disburse the payments to the concerns who furnished material for the construction of the cars. There were probably four or five of these creditors. We did not enter into any agreement with any of these creditors who came to see us that we would receive the money and see that it was distributed amongst the concerns who furnished material and labor for the construction of the cars. Some letters passed between myself as representative of the Pacific Coast Casualty Company and some of the concerns who were going to furnish material. No writings outside of the correspondence I have mentioned, to my knowledge, passed between the Casualty Company and any of the creditors in regard to the payment of labor and material out of moneys coming from the City. The instructions given us by the Holman Company were that we were to distribute this money to the people who furnished material for the construction of the cars. The instructions were contained in Trustee's Exhibits No. 2. In addition to that, we received oral instructions afterwards to make the payments to cer-

(Testimony of Marshall A. Frank.)

tain people, which were made. In the early part of December we received \$23,100 from the City in [23] connection with this matter. This was the first and only payment that we received. The Holman Company had not to my knowledge received any payments prior to that time.

I have here a statement of the disbursement of this money, which is known as Trustee's Exhibit No. 8. Mr. Loeb had advanced for one of the payrolls, just prior to December 12th, \$2,618.00, and Mr. Moses asked me to reimburse Mr. Loeb for that advance. Mr. Moses informed me that Mr. Kaufman had advanced \$907.00, which was used in a payroll, and asked me to pay Mr. Kaufman, which I did. The next one is S. Rosenheim, \$6,014.50. He advanced \$6,000 for the payroll, and the \$14.50 was the interest thereon. The next item is W. L. Holman Company, \$1,230. This amount was given by me to Mr. Moses for the following purposes: \$200.00 for rent; \$450.00 to pay a check that had been issued to the National Brake Company for brakes to be used on the cars, they having written to Mr. Moses that they would not furnish the additional brakes required until they had received payment for the first brakes. This check was sent to them, and a second lot of ten brakes was shipped. By the time the check reached San Francisco the Holman Company had no funds to make the payment, and it was paid out of this fund. The next item of making up the \$1,230.00 is \$400.00 for salaries. These were monthly salaries due at the plant of the Holman Company. The next item is

(Testimony of Marshall A. Frank.)

“Pacific Gas and Electric Company” for power, \$180. These together, make up the \$1,230.00. The next two items are for fire insurance covering the plant and the cars in course of construction, \$272.50 each. The next item is \$501.00 for liability insurance for the Holman Company and covered their legal liability for accidents occurring in the operation of their plant. The next item is \$2,106.87, being the agreed premium on the bond running to the City and County of San Francisco, and issued by the Pacific Coast Casualty Company on the 11th [24] day of June. The next item is “McNab & Smith, \$83.10,” and that was for the hauling of materials to the plant from the railroad cars to be used in the construction of the Geary Street cars. The next item \$155.00 was given to the Holman Company to pay painters who were laid off at that time, the painting having been completed. The next item is \$200.00 for sundries paid to the Holman Company. The next item is \$3,185, which was the payroll of the Holman Company on December 14th. The next item is \$200.00 given to the Holman Company for the payroll. The next item is December 21, payroll and rent, \$3,874. The next item is January 4, payroll, \$300; total, \$21,920.32, leaving a balance of \$1,179.68 on hand. This balance of \$1,179.68 still remains in the hands of the Pacific Coast Casualty Company under the terms of Trustee’s Exhibit No. 2.

When we received the first payment of \$23,100 we were approached by many of the creditors who wanted some money. I think they all called. I told

(Testimony of Marshall A. Frank.)

them that there would not be anything coming to them out of the first payment because the money had to be held to take care of the payrolls to complete the cars and they would have to get their money out of the second payment. I was waited on by the creditors individually and later by a committee. I was approached by the committee sometime in December, 1912. Mr. Irwin, Mr. Bulotti and Mr. Noack were on the Committee. The agreement of January 7, 1913, known as Trustee's Exhibit No. 5, was the only writing that passed between the Pacific Coast Casualty Company and the creditors' committee. There were a good many conferences between this committee of creditors and myself. The creditors' committee asked that they should receive from the Casualty Company the funds that were coming to them under the agreement with the Holman Company and make the distribution of these [25] funds instead of the Casualty Company making the distribution. The Casualty Company told the creditors' committee that it felt that it alone had the right to distribute these funds and that it should not be delegated to anyone else. The occasion of our entering into this agreement known as Trustee's Exhibit No. 5 was that the City and County of San Francisco, through its representative, demanded that it be done, stating that the Casualty Company had no right to distribute or keep the money of the creditors, and that the creditors should be allowed to make their own distribution. The creditors thought that they were entitled to the money and that it ought to be paid to

(Testimony of Marshall A. Frank.)

them. They and the City contended that the Casualty Company should give up the money to the creditors. In other words, its collateral that it had received for the writing of the bond should be turned over to those creditors who furnished material and labor for the cars. When I speak of "Collateral received for the writing of the bond," I refer to Trustee's Exhibit No. 2, the assignment of the money. The City assumed the position that it was getting the cars, and that it was its duty to see that the money for the cars went to those people who furnished the labor and material for the cars. After the agreement was entered into, January 7, 1913, the City made a payment of two payments. I believe these payments were made to the committee by the City.

Cross-examination.

At the time we entered into the agreement known as Trustee's Exhibit No. 2, we had an oral understanding with Mr. Riess of the Holman Company in relation to the payment of these moneys to the creditors who were to furnish the material and labor, to the effect that any money received under our assignment which would come from the construction of the cars was to be used solely for the purpose of paying the labor and material on the cars and that if there was any surplus the surplus was to [26] revert to the Holman Company to be used as they saw fit. Mr. Irwin, Mr. Bulotti and Mr. Noack, the Committee of Creditors, told me that they represented 95% of the creditors who furnished the material and labor for the twenty cars which were completed

(Testimony of Marshall A. Frank.)

directly by the Holman Company. They complained because we did not distribute the first moneys we received direct to them under this assignment. We afterwards took it up with the Board of Supervisors and the Mayor, and, on January 7, 1913, Trustee's Exhibit No. 5 was entered into. Trustee's Exhibit No. 2 has never been cancelled or annulled or superseded by any other paper. When we executed the instrument of Feb. 4, 1913, Exhibit No. 4, directing the Auditor to pay Mr. Irwin certain moneys, it was intended that Mr. Irwin was to act with Mr. Bulotti and Mr. Noack of the creditors' committee, and that this money was to be paid to him to be distributed in accordance with Exhibit No. 2 to the materialmen and those who had furnished labor. Exhibit No. 3 was collateral to Exhibit No. 2. The creditors' committee proposed that the Casualty Company give up its assignment and let them take a new assignment. The Casualty Company objected to that for the reason that this assignment was made contemporaneously with the execution of the bond, and the Company had certain rights under that which would be jeopardized by taking a new assignment. It would be jeopardized by proceedings in bankruptcy within four months and the new assignment might not be a valid one. The Mayor said that the City proposed to see that the materialmen were paid, that they should file stop notices with the City, and none of that money would be paid out, that he would see that it was distributed to them and no one else. He said that the Casualty Company had no right to receive it. He

(Testimony of Marshall A. Frank.)

seemed to think that they could hold the money for any claim that the City might [27] have against us for nonperformance of contract. That seemed to be the idea of some of the creditors and also of the City, that they were going to get hold of it and keep it and distribute it, and that was one reason why they took it away from us. On the other hand, the City was trying very hard to get the money and pay the creditors, the people who had furnished the material for the cars. They insisted upon the other payments being made in that way. They were trying very hard to take the money away from us. When I say "take the money away from us," I mean they required us to relinquish the security and to authorize the committee to receive the money and pay it out under the terms of Trustee's Exhibit No. 2.

Testimony of J. W. Reiss, Called for Trustee.

Direct Examination.

I was President of the Holman Company from August 1, 1912, until the petition in Bankruptcy was filed. In June, 1912, the contract was awarded the Holman Company by the City and County of San Francisco for the construction of the Geary Street cars. When I negotiated the bond of the Pacific Casualty Company with Mr. Frank it was agreed that all the moneys from the City paid to the Holman Company should be distributed in accordance with his knowledge and to his satisfaction for the protection of the people furnishing material and labor. In other words, he should have full power regarding the distribution of the money. We were to collect the

Testimony of J. W. Reiss.)

money, but its distribution was to be under his supervision. The money was to be paid at my suggestion, with his approval. I was to render him a statement of the amount due and he was to distribute the money equally upon this statement. I was to produce the bills to him and advise him just what was due. [28]

Testimony of Harry R. Noack, Called for Trustee.

Direct Examination.

I have been President of the Pierson, Roeding Company for the last four years. Beginning early in 1912, and consummated about the middle of June, 1912, we negotiated with the Holman Company for the sale of material in reference to the Geary Street contract. I also represented to J. G. Brill Company of Philadelphia, who also furnished materials for this contract. Payments were to be made by the Holman Company to the Brill Company upon receipt by the Holman Company of money from the City, but in any event, not later than thirty (30) days after the delivery of the material to the Holman Company. Immediately following the receipt of the first payment of \$23,100 by the Casualty Company from the City, it became apparent that the Casualty Company did not propose to pay the materialmen in accordance with the terms of the various contracts which had been made by the Holman Company with the materialmen and certain of the creditors got together and talked over a plan by which they would be able to get some of this money. There was a verbal understanding with the Holman Company about the time the orders were placed for material that we would

(Testimony of Harry R. Noack.)

be paid *pro rata* by the Holman Company, as the money was paid by the City. The original committee of creditors appointed consisted of A. M. Irwin, C. F. Bulotti and S. K. Colby, but in December I took Mr. Colby's place. This creditors' committee dealt exclusively with the creditors who furnished material on the twenty Geary Street cars built by the Holman Company. The committee visited Mr. Frank several times during this period endeavoring to persuade him to assign to the committee the collection of the moneys due under this contract and payable by [29] the City, including the balance of the first collection he had made. He refused flatly to pay any of the balance which the Casualty Company was holding out of the first payment of \$23,100, and said with reference to further payments that the Casualty Company held an assignment from the Holman Company as a protection for their bond and that they had undertaken to see that the money was distributed to the creditors furnishing materials and labor upon the contract, and thought that their interests would be jeopardized by letting the handling of this money pass out of their hands, and therefore they refused to accede to our request. The committee of creditors held a conference at which Mr. Moses of the bankrupt was present. We discussed plans for doing something to secure this money or to prevent the further payments being made through the hands of the Casualty Company. The general tone of the discussion was that we feared that the Casualty Company would not carry out the

(Testimony of Harry R. Noack.)

terms of their arrangement and pay the money direct for labor and material upon this contract, in that we had been unable to collect anything from the first payment, which made us a little suspicious of succeeding payments. Mr. Moses told us that he was confident that the creditors having furnished labor and material upon this Geary Street contract were entitled to their money and no one else, and that the Company had made representations when they had placed orders that they would see that the people furnishing labor and materials for the contract would be protected, and it would be his endeavor to see that that protection was given, and that he would lend his assistance and encouragement in anything that he could do to bring about that result. Mr. Moses said he had only one object in view, and that was to see that the people who furnished the material and labor on this contract received their [30] payment in full, and that he would lend every assistance and would furnish us with lists of his debts showing the amount which he had approved for payment, and generally assist us in fixing the amount owing, and would endeavor to see that these people whom the Company was owing were paid. It was stated that those who had given extension notes and also the open accounts owing prior to the Geary Street contract had no claim upon this Geary Street money, since it was generally understood that the Geary Street money was to be paid only to the Geary Street creditors; and we acted accordingly. Prior to the receipt of the first payment, and, in fact, subsequent thereto,

(Testimony of Harry R. Noack.)

Mr. Moses directed and assisted the committee in the disbursement of that money. He furnished verified lists of the amounts owing to the various creditors and the amounts due for labor at the plant on the 20 Geary Street cars. Regarding the collection and payment of these moneys there was a paper prepared and signed by the Holman Company and the three members of the Committee which we did not consider as an operative document in any way. It was simply prepared to be used under certain conditions as relating between the Casualty Company and their collection of the money from the City. In other words, if the Casualty Company would assign to this committee the disbursement and handling of this money, then this document which we prepared in a preliminary way would have been of use, but having not received that assignment at that time from the Pacific Coast Casualty Company, we simply held that document in our files. It was really a dead paper. We did nothing with this document. It never became operative. This was the only condition under which the document was to be used. This document is known as Trustee's Exhibit No. 6. This document was not filed with the Auditor. It was orally arranged between [31] the creditors' committee and the Holman Company that the money should be paid through the creditors' committee to all the creditors having furnished materials upon the 20 street-cars contract *pro rata* in proportion to their claims. There was no understanding between the Holman Company and the creditors' committee as to

(Testimony of Harry R. Noack.)

where the money should be deposited, or in what form the checks should take. Mr. Moses was to approve the payments only to the extent of furnishing lists which would be taken from his books, and therefore would be assumed to be correct, subject, however, to scrutiny and objection by the committee. We had an understanding with Mr. Moses that he would sign the checks. That was done at his request, and for one reason only, as far as he was concerned, that he would like to have his name appear and the Holman Company's name appear upon these checks going out to their creditors, but there was no necessity of his signing the checks. We did not agree with him that he should sign the checks. Only as a matter of courtesy; when he felt like signing them he would have that privilege. He signed all of the first payment and he did not sign any of the second payment which was distributed to the materialmen. He may have signed one or two of the second payment which were sent out for the payrolls. After the early meeting with Mr. Frank when the committee found that it could get no concession from him, in other words, that he would not give us this assignment of these moneys from the City and the right to disburse them after we collected them, we went before the Mayor and the Board of Supervisors to see if they could not assist us. The Mayor called a number of conferences at which members of the Board of Supervisors and of the creditors' committee were present, together with Mr. Frank of the Casualty Company. In the early conferences Mr. Frank took the attitude in just ex-

(Testimony of Harry R. Noack.)

actly the same manner as he had with the committee in [32] private which was to the effect that this assignment which he held from the Holman Company was the only thing which the Casualty Company held as a protection to their bond, and that they had undertaken to see that the money was distributed to the creditors furnishing the material upon this contract, and that if he allowed the distribution to go out of his hands he would have no bond and would have no means of knowing that the money would be distributed in the manner in which it was intended. Finally the Mayor and the Board of Supervisors induced Mr. Frank to enter into this agreement with the committee known as Trustee's Exhibit No. 5, by which he undertook to assign to the committee each individual payment as it fell due. He did not give us a general assignment or a general order upon the auditor, but he agreed to give us as many orders as was necessary in each instance when this money was to become due from the City. He gave us two such orders. It was under the authority given in Trustee's Exhibit No. 5, that Trustee's Exhibit No. 4 was obtained. After Exhibit No. 5 was entered into we received from the City a payment of \$34,650. This money was deposited by the committee in the Anglo & London Paris National Bank in the name of A. M. Irwin, C. F. Bulotti and H. R. Noack, just as three individual names. Checks signed by the three individuals would be honored on that particular fund. The purpose of the committee was to pay the creditors on the 20 car work. They got a subsequent second payment which

(Testimony of Harry R. Noack.)

was disbursed in the same manner as the first. The Casualty Company stated that if they were undisturbed in the handling of this money that they would pay out all money for the benefit of the people furnishing material and furnishing labor. The committee did not accept that proposition because they were a little skeptical about the Casualty Company carrying out such agreement to the letter, [33] because the Casualty Company had failed to do so in the instance of the first payment.

Cross-examination.

The reason for the existence of this creditors' committee was that the creditors were dissatisfied with the disposition of the funds of the first payment made by the bonding company. The committee had interviews with representatives of the bonding company and of the Holman Company and of the City at various times. The attitude of the bonding company was that they had written this bond and in return they had received an assignment from the Holman Company covering all moneys due under the Geary Street contract, and in that assignment it was agreed that the bonding company should dispose of all the money to be received by them on this contract to the creditors furnishing labor and material on the Geary Street contract. The bonding company stated that the reason they objected to having the funds put in the hands of the committee was that they wanted to see that it was properly distributed among the creditors who furnished labor and material. The attitude of Mr. Moses of the Holman Company was that the creditors furnishing

(Testimony of Harry R. Noack.)

labor and material were entitled to their money and it was his purpose just so far as he was able to do so to see that they received it, and if the bonding company had the distribution of this money that it was their purpose to see that the bonding company distributed the money in that manner. He stated that the understanding he had with the bonding company was that this fund was to be distributed among the creditors furnishing labor and material on the twenty-car job. The Mayor and the various members of the Board of Supervisors who were present at these conferences, and particularly at the conference at which Mr. Frank finally agreed [34] to make the assignment to the committee, expressed themselves in the public meeting as being very strongly of the opinion that the creditors having furnished labor and material upon this contract, and no others, were entitled to this money; the Mayor stated that it was his purpose to see that this money was directed to that channel only, and that he would use his office to that end, if he could possibly do so. The committee wished to have Mr. Frank turn over his contract to the committee in order that the committee could draw the money to accrue on this contract with the City. The reason this course was not pursued instead of the one that was pursued was this: The committee with the assistance of the City officials had finally persuaded Mr. Frank to give this assignment and it was the intent at that time to ask Mr. Frank to give them a new assignment, but when the matter was called to the attention of Mr. Deering, Mr. Frank's attorney, he raised the question

(Testimony of Harry R. Noack.)

that it would be unwise to invalidate the agreement then existing between the Holman Company and the Casualty Company for the reason that it was dated four months prior to the time that we were then meeting, and in the event of bankruptcy proceedings occurring the old assignment would be of greater advantage to the creditors than the new. The matter was then adjusted in accordance with Mr. Deering's suggestion.

Redirect Examination.

The Casualty Company took the position that it would pay the creditors for labor and material on the Geary Street contract. The committee was not willing to let the Casualty Company make these payments because they had received one payment of \$23,100 from the City and they refused to disburse that money in the manner intended in this assignment from the Holman [35] Company to the Casualty Company regarding the payment of all of the moneys due under this contract to the Casualty Company. None of us had received any of this money out of the first payment and we got a little suspicious that we might not be paid in the manner intended in that assignment, and we thought we had better endeavor to get in a secure position in regard to the money and disburse it in the manner intended by this committee rather than leave it in the hands of the Casualty Company. Our suspicion that the money would not be paid in the manner intended was aroused by the fact that the first payment had not been disbursed in accordance with the original understanding. Mr. Deering as an attorney sug-

(Testimony of Harry R. Noack.)

gested that as future possibility or a future contingency, if bankruptcy should ever arise with the Holman Company, it would be well to rely upon this old assignment, as that was four months prior to the time at which we were meeting.

Testimony of A. M. Irwin, Called for Trustee.

Direct Examination.

Mr. Frank made the statement to me that when he received the first payment he would distribute that amount among the creditors. At first Mr. Moses said to me in regard to the attitude of the Casualty Company and their distribution of the money in accordance with the prior understanding that he was inclined to think that everything would go along absolutely right. Later on he began to waiver in his attitude and to say that he thought it would be better for us to get this money for distribution in our own hands. The general substance of the conversations at the various conferences was the desire of the committee to secure the distribution to the creditors of the Holman Company representing labor and material furnished on the [36] Geary Street contract of such money as came from the City to the Casualty Company that the distribution be made through the committee and in an endeavor to secure that we had the Mayor call the several conferences. The committee of creditors had a very heated controversy with Mr. Frank for about a month and an official conference was held in the Mayor's office. Mr. Frank's position was that his original agreement with the Holman Company called for him to receive the money and disburse it to the creditors, that this

(Testimony of A. M. Irwin.)

was his intention and he did not see why he should hand it over to anybody else. The committee were endeavoring to have Mr. Frank sign an agreement by which he would allow the committee to collect from the City moneys under the original agreement made between the Holman Company and the Casualty Company. The Mayor and several members of the Board of Supervisors insisted with Mr. Frank that he was delaying and obstructing the proper prosecution of the completion of these cars and turning them over to the City and seeing that the money received by him under his agreement was properly distributed to the suppliers of material and labor where it belonged, and that unless he would comply with this reasonable request that they would use such persuasive methods as they could think of to have Mr. Frank comply with that request. Mr. Frank then signified his willingness to sign such an agreement. It was verbally proposed that a new assignment should be drawn to the creditors' committee. Mr. Deering objected to that proceeding saying that in the event of any legal action being taken against the Holman Company, such as bankruptcy proceedings, at any time, it would be much better for the committee's position to operate under the original agreement given to Mr. Frank, whereupon Mr. Deering and Mr. Vogelsang of the Board of Supervisors drew the agreement known as Trustee's Exhibit No. 5, which was executed. [37] After that the Holman Company and the Pacific Coast Casualty Company executed Trustee's Exhibit No. 4. After we got the money we deposited it in the Anglo & London Paris National Bank in the name of A. M. Irwin, C.

(Testimony of A. M. Irwin.)

F. Bulotti and H. R. Noack. There was a verbal understanding that the committee and Mr. Moses should confer as to the proportion, and that checks should be drawn for the proportion agreed upon for each creditor, and checks mailed to them. I requested Mr. Moses to approve the checks and he said that he would do so. I said we would prepare a little rubber stamp and he would put it on the checks and sign them. Mr. Moses in this way approved all the checks on this first payment. The approval was in the form "Approved for Geary Street cars W. L. Holman Company, ———, Secretary." As soon as we believed that the further cars had been delivered the Holman Company furnished me information of the demand numbers upon which they had made their demand and we secured another order signed by the Holman Company and by the Pacific Coast Casualty Company and went over the former procedure. The checks issued on the second payment were not approved by the Holman Company.

Testimony of Marcus Moses, Called for Trustee.

Direct Examination.

I was Secretary of the Holman Company from the first day of August, 1912, until the petition in bankruptcy was filed. There was some discussion with regard to the payment of \$23,000 to the Pacific Coast Casualty Company; still the matter was left almost entirely in the hands of the Casualty Company, at their discretion. I had very little to say in regard to it. I don't remember of their seeing me at all at any time particular [38] with regard to this money, except after the money had been received by

(Testimony of Marcus Moses.)

Mr. Frank. We told him we were not satisfied with the distribution of the money. They didn't consult me in regard to disposing of this money. But I know they had some talk in regard to the unsatisfactory way it had been disbursed, but I had no authority to say in regard to it. Nobody saw me in particular. We had no formal discussion because the matter was entirely out of our hands. The committee of creditors told me that the first payment of \$23,100 received by Mr. Frank had not been handled to their satisfaction and that they thought that they should have the handling of it, and I agreed with them. They wanted to get Mr. Frank to agree to some way that they could handle the future moneys. The Holman Company did not give certain specific instructions to Mr. Frank as to how this money was to be paid out, that is as to part of it. There was really no understanding that I know of in regard to the disposition of that money with Mr. Frank with the exception of a couple of notes that I insisted should be paid at once. I instructed him to pay me certain moneys to meet the pay-rolls. I did not tell him to pay certain concerns for materials furnished. He was to distribute the rest of the money among the creditors who furnished materials for the Geary Street cars. It was thoroughly understood between the committee and myself that those *money* when they were to be distributed, should be distributed to all the people who had furnished materials to the Geary Street Cars. Money was to be paid *pro rata* amongst the creditors. That was the understanding between us all. The arrangement entered into in regard to the checks was that these checks were to be

(Testimony of Marcus Moses.)

countersigned by me as a matter of form. I approved or countersigned some of these checks. I did not approve or countersign the balance of the checks for the reason [39] that my attorney advised me not to do it for reasons best known to himself. I think those checks were signed and sent out while I was absent. I furnished a list to Mr. Frank as to how that payment of \$23.100 made to the Casualty Company was to be disbursed. It was not paid at all according to my list. After the notes were paid—there were several notes out at that time on which I had gotten the money to pay my labor with—and when I signed my agreement to the Union Iron Works, my full understanding with Mr. Frank was that I would not sign that agreement unless this money was forthcoming first. There was something in the neighborhood of \$3500 that I insisted must be paid immediately, money we had borrowed and I had obligated myself to meet my pay-roll with. The note was paid. Then I submitted to Mr. Frank a list of creditors to be paid out of this \$23,100 principally small creditors, and it was ignored. In fact no attention was paid to it. He did not pay any of these creditors at all. He paid himself \$3,000 and some friends of his that had advanced some money also for pay-roll purposes. The balance of the money was kept intact to be used for pay-rolls. I talked the matter over with him and he could readily see that unless that money was kept intact to meet the pay-rolls we would be in a bad fix for money before we got another payment. So he resolved to keep the money and pay it out only as I needed it. After Mr. Frank had paid these notes due the money

(Testimony of Marcus Moses.)

was left subject to my order, that is, no money was paid out except as ordered by me.

Cross-examination.

The arrangement made with the Casualty Company was reported to me. It was that all the moneys we received from the City were to be assigned to the Pacific Coast Casualty Company, [40] to be distributed by them to the creditors. In all the negotiations in which I personally participated, the attitude taken by the Holman Company was that only the Geary Street car creditors were to participate in the distribution of the money coming from the Geary Street cars.

Redirect Examination.

The Holman Company was perfectly satisfied that the creditors' committee should have the handling of the other funds. I prepared the first set of checks for the first payment received by the creditors. I did not prepare the checks for the second payment. I only did it the first time as an assistance to the creditors' committee. The list was made out, and as I had the time and the feeling I wrote out the checks for them. It was no part of my business at all. Just merely a matter of accommodation. I would have written the second list had I been asked to.

Recross-examination.

The creditors' committee and I were acting in harmony as to the distribution of the funds by the committee. There was no criticism of improper prorating of the fund.

Testimony of Chas. F. Bulotti, Called for Trustee.**Direct Examination.**

I have been secretary of Eccles and Smith for the last nine years. We had taken no action toward collecting our claim on the Geary Street material contract for the reason that it was understood that we would get our money when the City made payment to the Casualty Company. Mr. Reiss of the Holman Company explained to us that all the moneys coming from the City would go over to the bonding company who would disburse the money to [41] us. The idea was that the money was going to the Bonding Company and that they were going to distribute it. Mr. Irwin made a report to the committee stating that he had telephoned to the Casualty Company two days after they had received this money from the City and asked them where his check was, and they said there was not going to be any check just at that time; that he called on the Casualty Company and on Mr. Frank repeatedly and had been told the same thing. That they had paid some moneys out for their payrolls and were going to hold the other money to see that the work was completed. The committee visited the Casualty Company many times, and also the Mayor's office where we had meetings with the finance committee and other supervisors and with the representative of the City Attorney's office. In regard to the collection of any moneys from the City, the creditors' committee finally prevailed on the Casualty Company to turn over to it such moneys as they received from the City, and at the time they received it. In the conferences the

(Testimony of Chas. F. Bulotti.)

position of the Casualty Company was that they were entitled to this money as their protection against claims, that the City might have or other people might have, against them in the matter. [42]

Trustee's Exhibit No. 1 (Bond).

KNOW ALL MEN BY THESE PRESENTS: That we W. L. HOLMAN COMPANY (a corporation), as principal and Pacific Coast Casualty Company, a California corporation, authorized to do a general surety business, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, in the just and full sum of Fifty Thousand (\$50,000) Dollars, lawful money of the United States of America, for the payment whereof well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Given under our hands and sealed with our seals, this 11th day of June, A. D. 1912.

NOW, the condition of the foregoing obligation is such, that whereas, the above bounden W. H. Holman Company (a corporation) has entered into a contract, of even date herewith, with the Board of Public Works of the City and County of San Francisco, as such Board, and not otherwise, to do and perform in the said City and County the following work, to wit:

Forty-three (43) double end, pay-as-you-enter, California type motor cars, complete.

Four (4) extra trucks complete with axles, wheels and motors.

For the Geary Street Municipal Railway,

as will more fully appear from said contract (executed in triplicate), reference to which is hereby made.

NOW, THEREFORE, if the above bounden W. L. Holman Company (a corporation) shall well and truly perform, or cause to be performed, every and all of the requirements of said contract, as in the said contract set forth, then this obligation to be null and void, otherwise to remain in full force and effect. [43] This bond is given in conjunction with and in addition to a bond of like amount, of even date herewith, covering the same contract.

W. L. HOLMAN COMPANY,
By J. W. REISS,

Vice-president.

PACIFIC COAST CASUALTY COMPANY,
By JOY LICHTENSTEIN,
Secretary.

(Contract.)

GEARY STREET RAILWAY CONSTRUCTION.
BOND ISSUE, 1910. CONTRACT No. 11.
RESOLUTION OF AWARD NO. 17729.

(Second Series)

THIS AGREEMENT, made this 11th day of June, A. D. 1912, by and between W. L. Holman Company (a corporation) of the City and County of San Francisco, State of California, the party of the first part, and the BOARD OF PUBLIC WORKS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, under and by virtue of the authority granted to it as such by Article VI of the Charter of said City and County, approved January 19th, 1899, the party of the second

part, acting for and in behalf of said City and County.

WHEREAS, the said party of the first part, as will more fully appear by reference to the record of the proceedings of the Board of Public Works of said City and County, on the 20th day of May, A. D. 1912, has been awarded the contract for the work hereinafter mentioned:

NOW, THEREFORE, THESE PRESENTS WITNESSETH, that the said party of the first part, for and in consideration of the premises aforesaid, and the consideration hereinafter mentioned, promises and agrees with the said Board of Public Works, as such and not otherwise, that it will under the direction and to the satisfaction of the said Board of Public Works furnish and deliver to the said [44] City and County of San Francisco the following articles ordered by the Board of Supervisors of said City and County, to be purchased for the Geary Street Municipal Railway, to wit: Forty Three (43) double end, pay-as-you-enter, California type motor cars, complete. Four (4) extra trucks complete with axles, wheels and motors. Said articles to be built and furnished in accordance with the plans and specifications hereunto annexed and which are hereby made a part of this contract, and the delivery of the same to be completed within one hundred and eighty (180) calendar days from the date of this contract, as specified in the notice inviting proposals therefor.

And the said Board of Public Works, in behalf of the City and County of San Francisco promises and agrees that upon the performance and fulfillment of the covenants aforesaid the said City and County will pay or cause to be paid, in the manner provided

by law, to said party of the first part, for the articles aforesaid, the following prices, to wit:

Proposition "A" for furnishing and delivering double end, "Pay-as-you-enter," "California" type semi-steel motor cars complete, in accordance with the specifications. The sum of seven thousand seven hundred dollars (\$7,700.00) each. For furnishing and delivering extra trucks complete with axles, wheels and motors, in accordance with the provisions of the specifications. The sum of one thousand five hundred dollars (\$1,500.00) each. Progressive payments for said articles completed and ready for delivery will be made within the meaning and intent of the provisions therefor in the specifications.

Time is of the essence of this contract in all things.

It is hereby stipulated that the said party of the first part shall forfeit, as a penalty, to the said City and County of San Francisco, ten (10) dollars for each laborer, workman, or mechanic employed in the execution of this contract, by the [45] said party of the first part, or by any sub-contractor under said party of the first part, upon the work in this contract specified, for each calendar day during which such laborer, workman, or mechanic, is required or permitted to labor more than eight hours in violation of the provisions of an act of the Legislature of the State of California entitled "An Act limiting the hours of service of laborers, workmen, and mechanics employed upon the public works of, or work done for, the State of California, or of, or for any political subdivision thereof; imposing penalties for violation of the provision of said act, and providing for the enforcement thereof," approved March 10,

1903, and of Section 653c, Penal Code of California, so far as such statutes may be applicable.

And it is further understood and agreed by and between the parties of the first and second part hereto, that this contract is entered into in compliance with, and subject to, the conditions imposed by Section 1, Chapter III, Article II, of the Charter of the City and County of San Francisco, providing that in the performance of this contract eight (8) hours shall be the maximum hours of labor on any calendar day, and that the minimum wages of laborers employed by the contractor in the execution of this contract shall be three (3) dollars a day so far as the same may be applicable. Also it is agreed and understood by the parties to this agreement, that in no case, except where it is otherwise provided in said Charter, will the said City and County, or any department or officer thereof, be liable for any expense of the articles aforesaid.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals, and have executed this contract in triplicate, the day and year first above written.

W. L. HOLMAN COMPANY, (Seal)

By J. W. REISS,

Vice-President, (Seal)

MICHAEL CASEY, (Seal)

DANIEL G. FRASER, (Seal)

C. S. LAUMEISTER, (Seal)

Commissioners, Board of Public Works of the City
and County of San Francisco.

Signed, sealed and delivered in the presence of

RICHARD J. CLINE. [46]

Trustee's Exhibit No. 2.

This Agreement made this 11th day of June, 1912, by and between W. L. HOLMAN COMPANY, a Corporation (The Principal), and PACIFIC COAST CASUALTY COMPANY, a corporation (The Surety), Witnesseth:

FOR AND IN CONSIDERATION of the Surety executing a certain bond on behalf of the Principal in favor of the City and County of San Francisco upon a contract to construct certain street-cars, the said Principal hereby appoints the Surety its Attorney in Fact and empowers it to sign in its name all demands in its favor for payments to be hereafter made by the City and County of San Francisco in connection with said contract and to receipt for and secure all such demands when payable from the Auditor of the said City and County.

The Principal further agrees that said demands are to be deposited in the Merchants' National Bank and an account opened in said Bank designated "W. L. HOLMAN CO., SPECIAL," into which all moneys received from the said City and County on said contract shall be paid and not withdrawn therefrom except by countersignature of the Surety or its designated representative upon the presentation of proper claim against said account incurred in connection with the performance of said contract, and after the full performance of said contract (maintenance claims not to be considered), and the satisfaction of all claims against the Principal arising from said contract, the balance, if any, remaining in said

account, to be paid to the Principal.

The Surety hereby agrees to execute the above bond and to turn said demands as received over to said Bank, the money collected therefrom to be deposited in said account subject to the terms and conditions hereof. [47]

IN TESTIMONY WHEREOF W. L. HOLMAN COMPANY AND PACIFIC COAST CASUALTY COMPANY have caused these presents to be executed and their official seals attached by their duly authorized officers on the day and year first hereinabove written.

W. L. HOLMAN COMPANY,

By (Signed) J. W. REISS,

Vice-President.

PACIFIC COAST CASUALTY COMPANY.

By JOY LICHTENSTEIN,

Secretary.

Accepted as to conditions governing account.

MERCHANTS' NATIONAL BANK.

By _____. [48]

Trustee's Exhibit No. 3.

THIS AGREEMENT, made this 11th day of June, 1912, by and between W. L. HOLMAN COMPANY, a Corporation (the Principal), and PACIFIC COAST CASUALTY COMPANY, a Corporation (Surety), Witnesseth:

FOR AND IN CONSIDERATION of the Surety executing a certain bond on behalf of the Principal in favor of the City and County of San Francisco upon a contract to construct certain street cars, the said Principal hereby appoints the Surety its Attor-

ney in Fact and empowers it to sign in its name all demands in its favor for payments to be hereafter made by the City and County of San Francisco in connection with said contract and to receipt for and secure all such demands, when payable, from the Auditor of the said City and County.

IN TESTIMONY WHEREOF W. L. HOLMAN COMPANY and PACIFIC COAST CASUALTY COMPANY have caused these presents to be executed and their official seals attached by their duly authorized officers on the day and year first hereinabove written.

W. L. HOLMAN COMPANY,

By (Signed) J. W. REISS.

PACIFIC COAST CASUALTY COMPANY.

By _____ [49]

Trustee's Exhibit No. 4.

San Francisco, Calif., Jan. 27th, 1913.

To the Auditor and Treasurer of the
City and County of San Francisco.

You will please pay to Mr. A. M. Irwin, representing creditors of the W. L. HOLMAN COMPANY, in the matter of construction of the Geary Street cars, the sum of Twenty-three Thousand, One Hundred (\$23,100) Dollars, due and payable on demands, bookkeepers' numbers 2895 and 2902, calling for \$11,550 each. Said demands are made payable to W. L. Holman Company, against which a certain assignment now on file in the Auditor's office, in favor

of Pacific Coast Casualty Company.

W. L. HOLMAN COMPANY,
By (Signed) MARCUS MOSES,

Sec.

PACIFIC COAST CASUALTY COMPANY.

By F. F. GREEN,

Pres.

San Francisco, Calif., Feb. 4th, 1913.

To the Auditor and Treasurer of the

City and County of San Francisco.

You will please pay to Mr. A. M. Irwin representing creditors of the W. L. HOLMAN COMPANY, in the matter of construction of the Geary street cars, the sum of Thirty-four Thousand, Six Hundred and Fifty Dollars (\$34,650.00) [50] due and payable on demands, covering delivery of six cars to the city. Said demands are made payable to W. L. Holman Company, against which there is a certain assignment, now on file in the Auditor's office, in favor of Pacific Coast Casualty Company.

W. L. HOLMAN COMPANY,
By (Signed) MARCUS MOSES,

Sec.

PACIFIC COAST CASUALTY COMPANY.

By F. F. GREEN,

Pres. [51]

Trustee's Exhibit No. 5.

San Francisco, Cal., Jan. 7, 1913.

The Pacific Coast Casualty Company hereby agrees to turn over to A. M. Irwin representing Westinghouse Electric and Manufacturing Company, C. F. Bulotti representing Eccles and Smith,

and H. R. Noack representing J. G. Brill Company, a committee of the creditors who have furnished money, material or labor in and about the construction of the cars of the Municipal Railway, all moneys received from the City and County of San Francisco under assignment from W. L. Holman Company, as soon as the Pacific Coast Casualty Company receives the money from the City, in consideration for which this committee agrees to disburse such money amongst all the creditors who have furnished money, material or labor for such construction, and this committee further agrees to hold the Pacific Coast Casualty Company harmless against any claim of any creditor for material or labor that has gone into, or has been used in, these cars, or for money that may have been advanced to W. L. Holman Company to be used in the construction of such cars, it being understood that the creditors who have furnished any material or any property necessary for the construction or running of such cars, are to give title and title shall pass to the City for such material or property as soon as such payments are made by the City, and full title shall pass to the City immediately upon final payment for construction being made by the City.

PACIFIC COAST CASUALTY COMPANY.

By MARSHALL A. FRANK,

Vice-President.

A. M. IRWIN,

C. F. BULOTTI,

H. R. NOACK,

Creditors' Committee. [52]

Trustee's Exhibit No. 6.

THIS AGREEMENT, made this 31st day of December, 1912, by and between W. L. HOLMAN COMPANY, a corporation, and A. M. IRWIN, C. F. BULOTTI and H. R. NOACK, Witnesseth:

FOR AND IN CONSIDERATION OF the furnishing of material to be used for and in the construction of certain cars to be furnished by the said W. L. HOLMAN COMPANY under a contract with the City and County of San Francisco, the said W. L. HOLMAN COMPANY hereby appoints the said A. M. IRWIN, C. F. BULOTTI and H. R. NOACK its Attorneys in Fact, and empowers them to sign in its name, all demands in its favor for payments to be hereafter made by the City and County of San Francisco in connection with said contract, except such payments as have been heretofore assigned by said W. L. HOLMAN COMPANY to the Union Iron Works Company, and to receipt for and secure all such demands when payable from the Auditor of the City and County of San Francisco.

IN TESTIMONY WHEREOF W. L. HOLMAN COMPANY and the said A. M. IRWIN, C. F. BULOTTI and H. R. NOACK have caused these presents to be executed and their official seals attached

on the day and year first hereinabove written.

W. L. HOLMAN COMPANY,

By (Signed) J. W. REISS,

Pres.

MARCUS MOSES,

Sec. & Treas.

A. M. IRWIN. (Seal)

C. F. BULOTTI. (Seal)

H. R. NOACK. (Seal)

Witness:

J. N. SAUNDERS. (Seal) [53]

**[Stipulation as to Statement of Evidence on
Appeal.]**

IT IS HEREBY STIPULATED that the foregoing statement of evidence upon appeal is true and correct.

Dated July 14th, 1914.

HENRY G. W. DINKELSPIEL,

J. M. THOMAS,

REUBEN G. HUNT,

Attorneys for Trustee in Bankruptcy.

MANSFIELD & NEWMARK,

Attorneys for C. F. Bulotti and H. R. Noack.

[Order Approving Statement of Evidence.]

The foregoing statement of evidence is hereby approved this 15 day of July, 1914.

M. T. DOOLING,

District Judge.

[Endorsed]: Filed Jul. 15, 1914, at 2 o'clock and 20 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [54]

EXHIBIT "I."

(Title of Court and Cause.)

Certificate of Referee on Petition for Review.

To the Honorable MAURICE T. DOOLING, Judge
of the District Court of the United States in and
for the Northern District of California:

The undersigned referee, to whom was referred the
above-entitled matter, respectfully certifies and re-
ports:

That on the 25th day of November, 1913, the
referee made an order in said matter denying a peti-
tion of C. F. Bulotti, and H. R. Noack. Said peti-
tioners feeling aggrieved thereat, on December 11,
1913, filed a petition to review said order. The ap-
pearances and a statement of the papers filed are con-
tained in the order under review.

The questions presented on this review are:

First: Did the bankrupt make an assignment of
moneys to become due it from the City and County of
San Francisco, under a contract for the construction
of street-cars to the Pacific Coast Casualty Com-
pany, surety on the bond of the bankrupt, to the city,
which assignment or trust gave to the creditors who
furnished labor and material in the construction of
the cars, a prior right to such moneys over other
creditors of the bankrupt?

Second: Was an equitable assignment of the
moneys payable by the city to the bankrupt made to
such creditors?

The facts are substantially as follows:

On the 11th day of June, 1912, the bankrupt

entered into a contract with the city for the construction of forty-three cars for the Municipal Railway, and furnished a bond to the city for the faithful performance of the contract, the Pacific [55] Coast Casualty Company, being the surety. On the same day the bankrupt made the following agreements with the surety company:

(Here follows Trustee's Exhibits Nos. 2 and 3 contained in Exhibit "F.")

On December 12th a progressive payment of \$23,-100 was collected from the city. This money was disbursed as shown by Trustee's Exhibit 1, and such disbursements are explained by the testimony of Marshall A. Frank, who was vice-president of the surety company, and with whom the bankrupt had the preliminary negotiations leading up to the making up of the bond. (Tr. p. 10 and 11.)

The creditors of the bankrupt who had furnished materials used in the construction of cars received no portion of this first payment. Many of them called upon Mr. Frank, who testified that they all wanted some money. These creditors also appointed a committee consisting of A. L. Erwin, C. F. Bulotti and H. R. Noack. Various conferences were had between this committee, or members thereof, and Mr. Frank. Mr. Frank testified that he stated to them that there would not be anything coming to them out of the first payment, because the money had to be held to take care of the payrolls to build the cars, and that they would have to get their money out of the second payment. (Tr. p. 14.)

For various reasons the bankrupt was unable to

complete the cars within the time limit of the contract. The matter was taken up between the city supervisors, the mayor, the casualty company and the bankrupt, at a meeting of the Board of Supervisors. The outcome of the discussions was that the construction of twenty-three cars was turned over to the Union Iron Works.

The evidence shows that the creditors who had furnished materials were not satisfied with the distribution of the first [56] payment, and sought to have the further payments to become due from the city, made payable to the creditors' committee. The surety company, on January 7, 1913, finally agreed to turn over to the creditors' committee all moneys received from the city "under assignment" from the bankrupt as soon as received, to be disbursed by the committee to all creditors who had furnished money, material or labor, for the construction of the cars. (Exhibit 5.) Concerning this matter Mr. Frank testified as follows (page 16):

"Q. What did the Casualty Company say in regard to their payments? That the money should be paid to them prior to this agreement?

A. Why, the Casualty Company felt that it alone had the right to distribute these funds and that it should not be delegated to anyone else. That is, prior to the time that they made the agreement.

Q. What was the occasion of the Casualty Company entering into this agreement?

A. Well, the City and County of San Francisco, through its representatives, demanded

that it be done; that they had no right to distribute the money, or keep the money of the creditors; that they should make their own distribution.

Q. What do you mean by saying that they should make their own distributions?

A. Well, the creditors thought that they were entitled to it and that it ought to be paid to them. They contended and the City and County contended that the Casualty Company should give up the money to the creditors, in other words, its collateral that it had received for the writing of the bond should be turned over to the creditors; that is, those creditors who furnished material and labor for the cars. The city assumed the position that it was getting the cars and that it was its duty to see that the money for the cars went to those people who furnished the labor and material for the cars.

Q. You speak about collaterals received for the writing of the bond. Did the Pacific Coast Casualty Company receive any collateral?

A. The collateral received June, 1911, the assignment of the money. That was the collateral."

The transcript of the testimony transmitted with this certificate includes testimony taken on behalf of the trustee upon the general examination of the bankrupt, this general examination embraced matters concerning the agreements between the bankrupt and the surety company, and various interviews had with creditors. By stipulation all testimony ma-

terial to the issues presented by the intervening creditors is to be . [57] used upon this hearing.

Counsel for the creditors' committee in their briefs have referred to various portions of the testimony. The portions referred to seem to me to fairly cover the material facts, and for convenience of reference I will insert them here in part.

Witness Frank testified:

“Yes, their instructions” (instructions of the bankrupt) “were that we were to distribute this money to the people who furnished material for the construction of the cars” (page 9).

“That agreement” (referred to the agreement exhibits 2 and 3) “was to the effect that any money received under our assignment which would come from the construction of cars was to be used solely for the purpose of paying the labor and material on the cars; and that if there was any surplus, the surplus would revert to the Holman Company to be used as they saw fit” (page 19).

Witness Noack, referring to the interviews had by the creditors' committee with the bonding company, representatives of the Holman Company and representatives of the city, testified:

“The attitude of the bonding company was that they had written this bond and that in return they had received an assignment from The Holman Company covering all moneys due under the Geary Street contract, and in that assignment it was agreed that the bonding company should disburse all of the money to be received

by them on this contract to the creditors furnishing labor and material on the Geary Street contract."

"Mr. Moses' (secretary of the bankrupt) attitude was that the creditors furnishing labor and material upon the Geary Street contract were entitled to their money, upon that contract, and it was his purpose, just so far as he was able to do so, to see that they received it, if the bonding company had the distribution of this money, it was their purpose to see that the bonding company distributed the money in that manner" (page 58).

"The committee were directed to disburse the money which would be received from the city. . . . Mr. Moses directed and assisted the committee in the disbursement of that money. . . . Mr. Moses furnished verified lists of the amounts owing to the various creditors, and the amounts due for labor" (page 39).

Mr. Moses testified:

"All of the moneys we received from the city were to be assigned to the Pacific Coast Casualty Company, to be distributed by them to the creditors. . . . Only the Geary Street car creditors were to participate in the distribution of the moneys coming from the Geary Street cars" (page 139).

Mr. Riess, president of the bankrupts, testified:

[58]

"When I negotiated the bond with Mr. Frank it was agreed that all the moneys from the city

paid to the Holman Company should be distributed in accordance with his knowledge and to his satisfaction for the protection of the people furnishing material and labor. In other words, he should have full power regarding the distribution of the money" (page 173).

"I was to furnish a statement and he was to distribute the moneys equally" (pages 173, 174).

Mr. Bulotti testified:

"It was understood that we would get our money when the city made payment to the Casualty Company. . . . Mr. Riess simply explained that all moneys coming from the city would come from the bonding company, he in turn would disburse the money to us. . . . The idea was that the money was coming to the bonding company and that they were going to distribute it" (page 159).

Mr. Moses further testified:

"There was some discussion in regard to the payments, still the matter was left almost entirely in the hands of the Pacific Coast Casualty Company, at their discretion. I had very little to say in regard to it.

Q. Did they see you after this \$23,000 had been paid to the Pacific Coast Casualty Company, or before? (Referring to the numbers of the creditors' committee.)

A. I don't remember of their meeting me at all at any time particular with regard to this money, except after the money had been received by Mr Frank. I think we both made a statement

to him" (referring to Mr. Miller, another member of the committee) "that we were not satisfied with the distribution of the money."

Mr. Noack further testified in regard to the efforts of the creditors' committee to obtain the payment of the money to them, that the committee visited Mr. Frank several times,

"endeavoring to persuade him to assign to the committee the collection of the money due under this contract, payable to the city. . . . "

But

"He refused flatly to pay any of the balance which the Casualty Company were holding, and he said, referring to further payments, that the casualty company held an assignment from the Holman Company as a protection for their bond, and that they had undertaken to see that the money was distributed to the creditors furnishing materials upon the contract, and that they thought that their interests would be jeopardized by letting the handling of this money pass out of their hands, and therefore they refused to accede to our request" (pages 33 and 34).

Mr. Noack further testified, referring to statements made by Mr. Moses to the committee (page 35):

"It was to the effect that he was convinced that the [59] creditors, having furnished labor and materials upon this Geary Street contract, were entitled to their money, and no one else, and that the company had made representations when they had placed order, that they would see

that the people furnishing labor and materials for the contracts would be protected, and it would be his endeavor to see that protection was given, and that he would lend his assistance and encouragement to anything which he could do to bring about that result."

Mr. Noack further testified (page 48) :

"Q. Why was it that the creditors' committee insisted upon having this money paid to their agency rather than to the agency of the casualty company, since the object of both was the same, that is, to pay off the labor and materials on the Geary Street cars?

"A. Simply because the committee was inclined to fear that since Mr. Frank had not disbursed any of the first payment to any of the creditors, that he knew of, that is to say, none of us, at least, and to none of our friends, that we had occasion to suspect, and we were inclined to think that if we had the immediate disbursement of the money that we would know where it went."

Counsel for the trustees objected to the admission of parol testimony to explain the written agreements between the bankrupt and the surety company. Under the decision of this court *In re W. J. Bartnett*, No. 5611, in Bankruptcy, the referee should take the testimony, even if he sustains the objection, I reserved my ruling on this objection. As between the rights of the surety company and the rights of the trustee, in my opinion the objection should be sustained, for the written agreements are not ambiguous. As to the rights of the creditors who claim an equi-

table assignment to them of the moneys payable by the city, parol testimony as to conversation had between the creditors and the bankrupt and between the surety and the bankrupt relating to the payment of the creditors, is admissible.

The agreements, exhibits 2 and 3, in my opinion, do not amount to an assignment to the surety company of moneys payable by the city. Mr. Frank, in his testimony, referred to these agreements as the assignments to the surety company, and as its collateral. Mr. Moses also referred to the agreement as [60] an assignment. The legal effect is not to be determined from what the parties may term the agreements, but from what the parties intended that each should do. As to such intention, these agreements are clear. The surety is given the right to sign the bankrupt's name as its attorney in fact, to all demands for payments from the city, and to receipt for and secure the money. The surety then must deposit the money in the Merchants' National Bank to the account of "W. L. Holman Company, Special," and which moneys then cannot be withdrawn by the bankrupt except by counter-signature of the surety.

By this agreement a particular fund is created out of which the bankrupts and the surety agreed should be paid the liabilities of the bankrupt arising in connection with the performance of the contract with the city. The agreement further provides that after the full performance of the contract . . . and the satisfaction of all claims against the principal arising from said contract, the balance, if any, remaining

in said account, is to be paid to the principal.

The surety's liability therefore ends when the contract is fully performed, whether or not the creditors who furnished labor and material for the cars had been paid. Upon the completion of the work and acceptance by the city the balance in this fund is payable to the bankrupt. The surety company has assumed no obligation to insure payments to the creditors. There is no provision that the surety company, on the termination of its liabilities, shall retain its control for the benefit of the creditors furnishing labor and material.

To constitute an assignment, an intent to pass title to the assignee must exist, whether the assignment is a legal or an equitable one. *McIntyre vs. Hauser*, 131 Cal. 11, in which the court says:

“In order to constitute an equitable assignment of a [61] debt, no express words to that effect are necessary. If, from the entire transaction, it clearly appears that the intention of the party was to pass title to the chose in action, then an assignment would be held to have taken place.”

The word “sale” is applied to a transfer of title to property reduced to possession, and the word “assignment” to a transfer of title to property not reduced to possession.

Cross vs. Sacramento Savings Bank, 66 Cal. 466.

In my opinion this agreement does not evidence an intent to pass title to the surety company, not even as security. Its protection consists solely in the right to control the disbursements through the pro-

vision for counter-signature. Even if title passed as security to the surety company I am nevertheless of opinion that no trust or equitable assignment for the benefit of creditors arose out of these agreements. The provision that the moneys coming from the city should be used to pay claims arising out of the contract was exacted by the surety for its own protection.

If an equitable assignment to the creditors exists, it is by virtue of promises made by the bankrupt to creditors to the effect that they would be paid out of this fund.

There is some testimony to the effect that certain of the creditors represented by the creditors' committee were informed by officers of the bankrupt, prior to giving credit to the bankrupt, that the money from the city was to be disbursed through the surety company, and that said creditors were influenced by said statements to extend credit to the bankrupt.

Such statements to creditors in my opinion, amount only to a promise to pay out of a particular fund, or to pay in a particular manner. A promise to pay out of a particular fund is not an equitable assignment of the fund.

In re Schastey & Vollmer, No. 7317, in this court.

Referee's report and opinion confirming, *in-re* claim of S. W. E. Stringer et al. [62]

The bankrupt retained control over the moneys in this fund, subject only to the rights given the surety company. The title to such money remained in the bankrupt. The creditors acquired no title thereto until the bankrupt gave them an order upon the fund. There are no outstanding orders against the balance

of the fund, the title to such balance being in the bankrupt passed to the trustee herein.

For the foregoing reasons the petition of the intervening creditors that said balance be paid to the creditors' committee, in my opinion, should be denied.

Respectfully submitted,

ARMAND B. KREFT,

Referee in Bankruptcy.

San Francisco, January 15, 1914.

[Endorsed]: Filed Jan. 15, 1914, at 4 P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[63]

EXHIBIT "J."

(Title of the Court and Cause.)

Supplemental Certificate of Referee on Petition to Review.

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States in and for the Northern District of California:

Since transmitting my certificate on the petition to review, taken by C. F. Bulotti and H. R. Noack, counsel for petitioners have requested me to supplement the same in respect to two matters, to wit:

First, that on the hearing of the petition in intervention it was admitted by counsel for the trustee that all the allegations of said petition in intervention were true, excepting that the trustee did not admit that the instruments of June 11, 1912, as set out in said petition in intervention constituted an assignment;

Second, that the fund here in controversy, namely,

\$1179.60, is not and never was deposited in any bank under a special account designated "W. L. Holman Company Special."

As to said stipulation I find the following entry in my docket under date of June 13, 1913: "Stipulated allegations of intervention admitted except paragraph 3, page 2, so far as it pleads the legal effect of certain instruments. Evidence on general examination to be considered on this intervention."

This stipulation is substantially as claimed by counsel for the intervenors. A general examination of the bankrupt's officers and other persons having dealings with the bankrupt preceded this controversy. Of course only evidence taken on the general examination which is material and competent to the [64] issues raised upon the intervention, is to be considered.

As to the second point, the trustee's petition for the order to show cause to the Surety Company alleges that the Surety Company has in its possession or under its control the sum of \$1179.68. The answer of the Surety Company refers to said sum as now in the possession of the Surety Company.

Upon the allegations and pleadings the intervening creditors are entitled to a finding, and I so find, that the said sum of \$1179.68 was not deposited in said special fund, and is now in the hands of the Pacific Coast Casualty Company.

I do not consider it material as to whether or not the money was deposited in the bank as required by agreement exhibit 2. The money was collected by the Surety Company under the power given by this

agreement, as attorney in fact of the bankrupt, and if the Surety Company disbursed the same without depositing it as required by the agreement, said disbursement was made as attorney in fact of the bankrupt. The fact that the bankrupt did not insist upon the deposit required by the agreement does not change the character of the transaction. The testimony of Mr. Frank is to the effect that the agreements, exhibits 2 and 3, were the only agreements had with the bankrupt concerning the collection and disposition of the money to be received from the city. The title to this money, whether on deposit in bank as provided by the agreement, or held in possession of the Surety Company, in my opinion would not pass to the creditors of the bankrupt until checks were given to them or orders by the bankrupt upon the Surety Company for the payment of their claims.

Respectfully submitted,

ARMAND B. KREFT,

Referee in Bankruptcy.

San Francisco, January 28, 1914.

[Endorsed]: Filed Jan. 29, 1914, at 3 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [65]

EXHIBIT "K."

(Title of the Court and Cause.)

Opinion and Order Reversing Orders of Referee.

This matter comes on on the petition of C. F. Bulotti and H. R. Noack, and the petition of Judson Manufacturing Company and M. Greenberg's Sons, to review certain orders of the referee herein.

The questions involved have to do with certain moneys due from the City and County of San Francisco for the construction of certain cars by the bankrupt. The press of business and lack of time prevents me from reviewing the matters *in extenso*. I am of the opinion, however, that the contracts of June 11, 1912, and the subsequent oral construction thereof, together with the understanding prevailing among all concerned, should be held to protect those mentioned in such contracts and who furnished materials that went into the construction of the cars. The questions are not free from difficulty, but if error be made, I prefer to err in favor of those who acted in good faith in furnishing materials under the belief that they were protected by the contracts in question.

The orders sought to be reviewed are, therefore, reversed.

April 28th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: At 5 o'clock P. M. Filed Apr. 28, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [66]

EXHIBIT "L."

(Title of Court and Cause.)

**Petition for Appeal by Trustee in Bankruptcy and
Order Allowing Appeal.**

H. Van Luven, Esq., the trustee of the estate of the above-named bankrupt, considering himself aggrieved by the order of the above-entitled Court made and entered herein on the 28th day of April,

1914, in the above-entitled matter, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, denying the petition in intervention of C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Company, a corporation, and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate, does hereby appeal from said order of the said Court to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated June 19th, 1914. [67]

HENRY G. W. DINKELSPIEL,
J. M. THOMAS,
R. G. HUNT,

Attorneys for H. Van Luven, Trustee in Bankruptcy
of W. L. Holman Company, a Corporation.

The foregoing appeal is allowed.

Dated June 19th, 1914.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Jun. 19, 1914, at 9 o'clock and
50 min. A. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [68]

EXHIBIT "M."

(Title of Court and Cause.)

Assignment of Errors on Appeal.

And now on this, the 19th day of June, 1914, comes H. Van Luven, Esq., as trustee in bankruptcy of the estate of W. L. Holman Company, a corporation, by Henry G. W. Dinkelspiel, J. M. Thomas and Reuben G. Hunt, his attorneys, and says that the order of the above-entitled Court made and entered herein on the 28th day of April, 1913, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the said Court, denying the petition in intervention of C. F. Bulotti and H. R. Noack, that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Co., a corporation, and claimed by the trustee in bankruptcy to be a part of the bankrupt's estate, is erroneous and against his just right for the following reasons:

(1) The evidence upon which the said order of the referee is based shows that the said C. F. Bulotti and H. R. Noack, and each and all of the creditors they represent as trustee, have no right, title or interest in or to the said sum of \$1,179.68, or any part thereof.

(2) The evidence upon which the said order of the referee is based shows that the said C. F. Bulotti and H. R. Noack, and each and all of the creditors they represent as trustee, have no lien, either legal or equitable, upon the said sum of \$1,179.68, or any part thereof. [69]

(3) The evidence upon which the said order of the referee is based shows that the said C. F. Bulotti and H. R. Noack and each and all of the creditors whom they represent as trustee, have no right, title or interest in the said sum of \$1,179.68, or any part thereof, as against the said trustee in bankruptcy.

(4) The evidence upon which the said order of the referee is based shows that the said C. F. Bulotti and H. R. Noack, and each and all of the creditors they represent as trustee, have no lien, either legal or equitable, upon the said sum of \$1,179.68, or any part thereof, as against the said trustee in bankruptcy.

(5) The evidence upon which the said order of the referee is based shows that the said sum of \$1,179.68 belongs to the estate of the bankrupt for the benefit of the general unsecured creditors of the bankrupt, and that the title thereto is in the trustee in bankruptcy.

(6) The evidence upon which the said order of the referee is based shows that the said C. F. Bulotti and H. R. Noack, and each and all of the creditors they represent as trustee, are not secured creditors of the bankrupt as to the said sum of \$1,179.68, or any part thereof, but are general unsecured creditors of the bankrupt as to the said sum.

(7) The evidence upon which the said order of the referee is based shows that no assignment, either legal or equitable, was ever made by the bankrupt to the said Pacific Coast Casualty Co. for the benefit of creditors furnishing material or labor upon the construction of the Geary Street cars.

(8) The evidence upon which the said order of the referee is based shows that the bankrupt never made any assignment, legal or equitable, for the benefit of its creditors [70] furnishing material or labor upon the construction of the Geary Street cars.

WHEREFORE, the said H. Van Luven, as such trustee, prays that the said order of the District Judge may be reversed.

HENRY G. W. DINKELSPIEL,
J. M. THOMAS,
REUBEN G. HUNT,

Attorneys for H. Van Luven, Trustee in Bankruptcy
of the W. L. Holman Co., a Corporation.

[Endorsed]: Filed Jun. 19, 1914, at 9 o'clock and
50 min. A. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [71]

EXHIBIT "N."

(Title of Court and Cause.)

Citation on Appeal (Copy).

The United States of America,
Ninth Circuit.

To C. F. Bulotti and H. R. Noack, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco in said district on the 18th day of July next, pursuant to a petition for appeal and assignment of errors filed in the clerk's office of the District Court of the United States for the Northern District of California, First Division,

in the above-entitled matter, to show cause, if any there be, why the order of the said District Court rendered in the said matter and made and entered herein on the 24th day of April, 1914, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, denying the petition in intervention of the said C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Company, a corporation, and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. [72]

Witness the Honorable M. T. DOOLING, Judge of said District Court, this 19th day of June, in the year of our Lord, one thousand nine hundred and fourteen, and of the independence of the United States of America the one hundred and thirty-eighth.

M. T. DOOLING,

United States District Judge.

Receipt of a copy of the foregoing Citation on Appeal is hereby admitted this 19th day of June, 1914.

MANSFIELD & NEWMARK,

Attorneys for the Said C. F. Bulotti and H. R. Noack.

[Endorsed]: Filed Jun. 19, 1914, at 2 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [73]

**Certificate of Clerk U. S. District Court to
Transcript on Appeal.**

I, W. B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 73 pages, numbered from 1 to 73, inclusive, contain a full, true and correct Transcript of certain records and proceedings, in the matter of W. L. Holman Company, a corporation, in Bankruptcy, No. 7936, as the same now remain on file and of record in the office of the Clerk of said District Court; said Transcript having been prepared pursuant to and in accordance with the "Praecipe for Transcript of Record for Use on Appeal" and "Stipulation for Diminution of Record," copies of which are embodied in this Transcript, and the instructions of the Attorney for Trustee and Appellant herein.

I further certify that the costs for preparing and certifying the foregoing Transcript on Appeal is the sum of Forty Dollars and Ninety Cents (\$40.90), and that the same has been paid to me by the attorney for appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein (paged 75, 76, and 77).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 31st day of July, A. D. 1914.

[Seal]

W. B. MALING,
Clerk.

By Lyle S. Morris,
Deputy Clerk. [74]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 7936—IN BANKRUPTCY.

In the Matter of W. L. HOLMAN COMPANY, a
Corporation,

Bankrupt.

Citation on Appeal (Original).

The United States of America,
Ninth Circuit,—ss.

To C. F. Bulotti and H. R. Noack, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco in said district on the 18th day of July next, pursuant to a petition for appeal and assignment of errors filed in the clerk's office of the District Court of the United States for the Northern District of California, First Division, in the above-entitled matter, to show cause, if any there be, why the order of the said District Court rendered in the said matter and made and entered herein on the 24th day of April, 1914, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, denying the petition in intervention of the said C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1,179.68 held by the Pacific Coast Casualty Company, a corporation, and claimed by the said trustee in bankruptcy

to be a part of the bankrupt's estate, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. [75]

Witness the Honorable M. T. DOOLING, Judge of said District Court, this 19th day of June, in the year of our Lord one thousand nine hundred and fourteen, and of the independence of the United States of America the one hundred and thirty-eighth.

M. T. DOOLING,
United States District Judge.

Receipt of a copy of the foregoing Citation on Appeal is hereby admitted this 19th day of June, 1914.

MANSFIELD & NEWMARK,
Attorneys for the Said C. F. Bulotti and H. R. Noack. [76]

[Endorsed]: No. 7936. In the District Court of the United States, Northern District of California. In the Matter of W. L. Holman Company, a Corporation, Bankrupt. Citation on Appeal (C. F. Bulotti and H. R. Noack). Filed Jun. 19, 1914. At 2 o'clock and 30 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [77]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 7936—IN BANKRUPTCY.

In the Matter of W. L. HOLMAN COMPANY, a
Corporation,
Bankrupt.

Order Enlarging Time for Return Day of Citation on Appeal.

The undersigned District Judge having, on the 19th day of June, 1914, signed and issued in the above-entitled matter a citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit by H. Van Luven, Esq., as trustee of the estate of the above-named Bankrupt, from the order of the above-entitled court made and entered herein on the 28th day of April, 1914, reversing the order of A. B. Kreft, Esq., a referee in bankruptcy of the above-entitled court, denying the petition in intervention of C. F. Bulotti and H. R. Noack that they be awarded as against the said trustee in bankruptcy the sum of \$1179.68 held by the Pacific Coast Casualty Company, a corporation, and claimed by the said trustee in bankruptcy to be a part of the bankrupt's estate,

And the return day in the said citation on appeal having been set for the 18th day of July, 1914, but it appearing that, without the fault of the said trustee in bankruptcy, the clerk of the above-entitled court has been unable to prepare the record on appeal so that it could be filed and docketed in the said United States Circuit Court of Appeals for the Ninth Circuit within the time fixed by the said citation on appeal, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for such return be and the same is hereby enlarged and that the said return day be and the same is

hereby continued to the 18th day of August, 1914.

Done in open court this 15th day of July, 1914.

M. T. DOOLING,

District Judge.

[Endorsed]: No. 7936. In the District Court of the United States, Northern District of California. In the Matter of W. L. Holman Co., a Corporation, Bankrupt. Order Enlarging Time.

Receipt of a copy of the within Order Enlarging Time is hereby admitted this 15th day of July, 1914.

MANSFIELD & NEWMARK,

Attorneys for C. F. Bulotti and H. R. Noack.

No. 2457. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 18, 1914, to File Record Thereof and to Docket Case. Filed Jul. 16, 1914. F. D. Monckton, Clerk. Refiled Aug. 3, 1914. F. D. Monckton, Clerk.

[Endorsed]: No. 2457. United States Circuit Court of Appeals for the Ninth Circuit. H. Van Luven, as Trustee in Bankruptcy of the Estate of W. L. Holman Company, a Corporation, Appellant, vs. C. F. Bulotti and H. R. Noack, Appellees. In the Matter of W. L. Holman Company, a Corporation, Bankrupt. Transcript of Record. Upon

Appeal from the United States District Court for
the Northern District of California, First Division.

Received and filed August 3, 1914.

F. D. MONCKTON.

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.